

VZCZCXRO0690  
RR RUEHLH RUEHPW  
DE RUEHIL #1625/01 1990507  
ZNR UUUUU ZZH  
R 180507Z JUL 09  
FM AMEMBASSY ISLAMABAD  
TO RUEHC/SECSTATE WASHDC 3855  
INFO RUEHBUL/AMEMBASSY KABUL 0639  
RUEHLO/AMEMBASSY LONDON 0928  
RUEHNE/AMEMBASSY NEW DELHI 5241  
RUEHLH/AMCONSUL LAHORE 7601  
RUEHPW/AMCONSUL PESHAWAR 6561  
RUEHKP/AMCONSUL KARACHI 1994  
RUEATRS/DEPT OF TREASURY WASHINGTON DC  
RUEKJCS/SECDEF WASHINGTON DC  
RHEHNSC/NSC WASHINGTON DC  
RUEAIIA/CIA WASHINGTON DC  
RUCPDOG/DEPT OF COMMERCE WASHINGTON DC  
RUEKJCS/JOINT STAFF WASHINGTON DC

UNCLAS SECTION 01 OF 02 ISLAMABAD 001625

SENSITIVE  
SIPDIS

E.O. 12958: N/A

TAGS: [ECON](#) [ENRG](#) [EFIN](#) [PGOV](#) [PREL](#) [PK](#)

SUBJ: SUPREME COURT AND GOP CLASH OVER FUEL TAX; GOP WINS FOR NOW

REF: A. ISLAMABAD 1355

[1](#)B. ISLAMABAD 1520

[1](#)1. (SBU) (SBU) Summary: The Supreme Court on July 7 suspended the GOP's newly-adopted fuel surcharge or "carbon tax" only to have President Zardari impose an almost identical version of the tax by Presidential ordinance on July 9. The "carbon tax" had gone into effect July 1 as a part of the annual budget passed unanimously by the National Assembly in place of the petroleum development levy, a tax that generated some \$1.5 billion for GOP coffers but which the Court had ordered abolished in May (Ref A). Although wrangling over the legality of Zardari's move continues, the Court adjourned for one month with the tax still in place. Protesters in a number of cities have rallied against President Zardari's imposition of the tax. End Summary.

[1](#)2. (U) The Supreme Court had ruled in May that the petroleum development levy (PDL) was unfair, because despite the decline in world oil prices, the GOP was maintaining elevated fuel charges to garner revenue, rather than passing on the lower fuel prices to consumers (Ref A). Sharp declines in fuel prices in the second half of the 2008-09 fiscal year, combined with the GOP's elevated prices, brought windfall revenue of over \$1.5 billion to the GOP's coffers. After the Supreme Court ordered the GOP to abolish the PDL, the GOP replaced it with a fuel surcharge in the FY 2009-2010 budget. Finance Advisor Shaukat Tarin maintained that enacting the new tax as a part of the budget approved by the National Assembly would deflect further legal challenges. Originally introduced (and still popularly known) as a "carbon tax," the tax was renamed a "fuel surcharge" when National Assembly members took note that it contained no incentives for consumers to "go green" and actually taxed environmentally-friendly compressed natural gas (CNG). CNG was dropped from the tax and the budget (with the amended tax) was passed unanimously by the National Assembly (Ref B).

[1](#)3. (SBU) Soon after the budget came into effect July 1, suits were again lodged in the Supreme Court contesting the legitimacy of the fuel surcharge. On July 7, a three-member bench of the Supreme Court led by Chief Justice Iftikhar Muhammad Chaudhry ordered the temporary suspension of the fuel surcharge pending presentation of further evidence of its necessity and precise nature. The government complied with the Court ruling and announced lower fuel prices later that day. The Court acted in response to several suits, one of which was brought by attorney Akhram Sheikh on behalf Pakistan Muslim League-N (PML-N) secretary general Iqbal Zafar Jhagra. Sheikh told PolOff July 7 that he challenged the ordinance on the grounds that it falls disproportionately on the poor and denies them a constitutionally guaranteed "fundamental right" of social justice. Sheikh asserted that, Tarin's assurances notwithstanding, any measure no matter how it is adopted, can be

challenged in the court.

¶4. (SBU) On July 9, however, President Zardari re-imposed a version of the tax by ordinance (similar to an Executive Order in the U.S.) which it named a "petroleum levy." Prices at the pump were duly restored to their previous higher levels. Attorney General Sardar Latif Khosa notified the Court the same day that the GOP was withdrawing the fuel surcharge and had issued the ordinance instead to "send a positive signal to the International Monetary Fund (IMF)" (Note: GOP and IMF representatives were holding the week of July 3 the third review of Pakistan's progress in meeting criteria under its Stand-By Arrangement (SBA) for the delivery of the next tranche of funds. Eliminating the fuel tax altogether would have added almost another percentage point to the deficit and might have prevented a successful conclusion to Pakistan's IMF review. End Note). Presidential spokesman Farhatullah Babar asserted that the GOP had shown "respect for the independence of the judiciary by upholding its verdicts" when it withdrew the previous tax and issued the re-named petroleum levy by ordinance.

¶6. (SBU) New legal challenges were brought almost immediately. Media reported that PML-N and others filed new suits challenging the ordinance on July 10 on the grounds that it disproportionately targeted the poor and that the President does not have the power to impose taxes. The suits asked that the tax again be suspended until the Court has heard arguments. The Court denied initial petitions to suspend the ordinance and announced it will reconvene in one month to hear further arguments, leaving the tax in place.

¶7. (U) Public response to the President's re-imposition of the tax has been negative. Protesters representing transport associations

ISLAMABAD 00001625 002 OF 002

in Peshawar burned an effigy of Zardari and chanted slogans against the government on July 10. Truckers in Swabi and Lahore staged peaceful demonstrations and warned that protests would continue until the ordinance is removed. Protestors in Peshawar and Karachi voiced their opposition not only to the resumption of higher fuel prices, but also to GOP action that they termed contrary to the Supreme Court decision. At a protest in Karachi organized by the Old City Traders Alliance, protesters blamed the IMF for the tax, accusing the IMF of intruding on Pakistan's sovereignty.

¶8. (SBU) Comment: Because the Supreme Court is the court of first instance "with respect to the enforcement of fundamental rights, if the case involves a question of public importance," jurists were able to make a case directly to the highest court that the fuel surcharge (and the petroleum development levy before it) infringed upon citizens' fundamental right to social justice - despite the surcharge having been approved by the legislature. However, there is still hot debate as to whether the Court overreached in taking on the case, as well as widespread condemnation of President Zardari's response. The renewed legal challenges as to the right of the executive to levy taxes leave the future of the ordinance ultimately uncertain, although it remains in place currently. Chairman of the National Assembly Standing Committee on Commerce Khurram Dastgir told ECON that the GOP could - and rightly should have - brought the issue back to the legislature for urgent action once the Court suspended the fuel surcharge. Clearly aware of the IMF review underway simultaneously in Istanbul (readout septel), the GOP chose to act so as to avoid possibly derailing the next tranche of funds with a budget-busting deficit while it made its case in court.